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C O N F I D E N T I A L BOGOTA 001208

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E.O. 12958: DECL: 04/08/2019
TAGS: PGOV PREL PTER SNAR KJUS CO
SUBJECT: COLOMBIA: PROPOSED ACTION PLAN TO ENSURE CONTINUED
SUCCESS OF OUR EXTRADITION PROGRAM

REF: A. 09BOGOTA434
 1B. 09BOGOTA849
 1C. 09BOGOTA1027

Classified By: Ambassador William R. Brownfield
Reasons 1.4 (b) and (d).

SUMMARY

11. (C) The Colombian Supreme Court's recent denial of seven U.S. extradition requests marked the Court's shift to a more restrictive interpretation of Colombia's constitutional limits on extradition. The shift reflects a longstanding debate in Colombian judicial circles, a nationalist backlash against the increasing number of U.S. extradition requests, the rising legal importance in Colombia of victims' rights issues, a popular perception that extradition no longer assures severe punishment of those extradited, and institutional tensions between President Uribe and the Court.

A March 26 meeting between the Ambassador and senior GOC officials helped defuse the issue and identified a way forward to address the Court rulings while preserving the extradition tool. Still, Post believes that some USG adjustments are needed to assure the continued success of our extradition program. Post requests Department approval of a new approach that includes careful Washington agency review of the number, type, and solidity of extradition requests submitted, positive engagement with the Court, and more Post flexibility to consult with the GOC on cases that may have political fallout (see para 8 for action request).

NEW RESTRICTIVE INTERPRETATIONS ON EXTRADITION

12. (SBU) Recently the Colombian Supreme Court has adopted a more restrictive interpretation of the Colombian Constitution's limits on extradition, applying the "extraterritorial" language and double jeopardy concept to deny U.S. extradition requests (Ref A). In the past, the Supreme Court interpreted Article 35 of the Colombian Constitution in a more expansive manner, allowing the "extraterritorial" standard to be met by acts committed outside of Colombia and/or by acts with effects outside of Colombia (Ref A). As a result of the narrower standard, the Court has denied seven U.S. requests to extradite FARC and ELN members for hostage-taking or terrorism charges over the last seven months, arguing that all acts were committed in Colombia. Gerardo Antonio Aguilar-Ramirez ("Cesar") was approved for extradition, but based on narcotic charges.

¶3. (SBU) The Supreme Court has also changed its jurisprudence on cases involving double jeopardy (when a subject is charged in Colombia for the same crime for which the U.S. is seeking extradition). Traditionally, the Court deferred the question of double jeopardy to the Executive branch. On February 19, it applied the double jeopardy concept to deny the extradition of narcotrafficker Fredy Ferney Gonzalez Monsalve. Gonzalez had been sentenced to 22 years in prison in Colombia for drug-trafficking seven months before we requested extradition. On April 1, the Court approved the extradition of Nancy Conde Rubio, "Cesar"'s girlfriend who was solicited as part of the same group of the First Front of the FARC for hostage-taking and terrorism charges. The decision signifies that the Court will not accept guilty pleas as a way to invoke double jeopardy.

REASONS FOR COURT'S SHIFT

¶4. (SBU) Colombian attorneys, judges, and legal theorists tell us the Court's shift to a more restrictive interpretation of constitutional limits on extradition reflects a legitimate, longstanding debate within judicial circles. A minority has always argued that the Court should apply a more restrictive standard in determining what acts are needed to satisfy the Constitution's extraterritorial requirement. They tell us the minority view has now become the majority view due to a mix of juridical and political factors. These include:

--A general nationalist backlash against the growing number, and expansive nature, of extradition cases. The number of extraditions has more than doubled since 2006. Of the 907 extraditions since 1998, 58% have occurred since 2006. Leading magazine editor Alfonso Cuellar and Constitutional Court magistrate Mauricio Gonzalez told us some magistrates resent extradition due to the growing numbers, as well as the perceived relative unimportance of some targets. DEA has also been told that the Court has objected to GOC's decisions to extradite some high-level targets, including fifteen former Paramilitary leaders who were part of the Justice and Peace process. Local media reports that extradited Colombians plea bargain their way to lax sentences in the United States has undermined public and elite confidence that extradition guarantees severe punishment.

--The increasing impact of victims rights arguments has made the Court sensitive to actions, such as extradition, which are perceived as undercutting this principle. In two cases early last year, the Court did not deny extradition but urged the executive to take into account its impact on victims' rights when approving the requests. The Court's perception is that the executive ignored its recommendations. On March 23, three leading Colombian human rights groups denounced Colombia's extradition last year of 15 paramilitary leaders to the United States before the Inter-American Commission on Human Rights as violations of international standards on victims' rights to truth, justice and reparations.

--The institutional tensions between President Uribe and the Court--which originated in turf battles between the Constitutional and Supreme Courts but was exacerbated by the Court's parapolitical investigation and the executive's spying on Court magistrates--have become deeply personal to some magistrates. President Uribe's aggressive use of extradition in his war against narcoterrorism--and his resistance to any efforts by the Court to limit his authority in this regard--has injected extradition into the dispute between the two institutions(Ref b).

¶5. (C) Magistrate Gonzalez told us there is pervasive corruption in Colombia's judiciary and acknowledged inappropriate contacts between some magistrates and criminal figures. Still, he stressed that he was not aware of any evidence linking specific Supreme Court rulings to corrupt contacts, and discounted this as a factor in the recent extradition decisions. Senior GOC officials have also

conceded that despite allegations that the Court's ties to former paramilitaries and other criminals influenced Court rulings, they have no evidence to substantiate such claims (Ref b). Moreover, there are no reports that any magistrates have links to the FARC.

MOVING FORWARD: GAFAS AND SOMBRA

¶ 16. (C) In a March 26 meeting between the Ambassador and MOIJ Minister Fabio Valencia, Foreign Minister Bermudez, and other senior GOC officials, we were advised not to continue to pursue the extradition of "Gafas" for narcotrafficking, kidnapping, and hostage-taking charges at this time due to the tensions generated by our diplomatic note outlining our arguments in support of such extraditions (Ref c). Valencia also suggested that an informal Embassy letter to the Court, or an informal conversation, on the Heli Mejia Mendoza case ("Martin Sombra") would be less offensive than a diplomatic note.

¶ 17. (C) If the USG decides to pursue reconsideration of the "Gafas" case, MOIJ Vice Minister Ceballos advised us to assert that the three U.S. citizens held hostage by the FARC were "Internationally Protected Persons" at the time of their capture. This argument could also strengthen the "Martin Sombra" case. The Embassy is confirming whether the three ex-hostages were afforded some privileges and immunities when they were captured.

POST SUGGESTIONS ON NEW STRATEGY

¶ 18. (C) Prosecutor General Mario Iguaran told the Ambassador on March 24 that "we are at risk of losing extraditions" due to the Court's shift. We believe the Ambassador's March 26 meeting with Valencia defused the tension over extradition

and outlined a way forward on the issue, including how to address the Court's legal reasoning in its recent decisions (Ref c). Despite the progress, Post suggests additional actions to assure the continued success of our extradition program. Post asks that the Department and appropriate Washington agencies review and approve the following components of a new approach:

--DOJ/DEA conduct an enhanced review of extradition requests to ensure that only the most solid cases proceed;

--DOJ/DOS take a fresh look at the number and types of cases in which we are seeking extradition, so that we emphasize that we are being more discriminating in our requests; (Note: DEA Colombia has established an internal quality control review of extraditions for DEA bilateral investigations. With few sensitive exceptions, it has become standard practice during the course of a bilateral investigation to engage in a collaborative decision process between Embassy DEA/JUDATT and Colombian police/prosecutors to mutually determine which criminal targets should be prosecuted in Colombia and which should be considered for extradition to the Untied States.)

--USG engage positively with the Court, including invitations from the Attorney General and the U.S. Supreme Court Chief Justice to Colombian magistrates to visit the United States, possible seminars or speakers on extradition issues, etc.;

--Ambassador carefully scrutinizes each extradition request for political fallout before we send it forward to the GOC, as well as before actual removal, in order to give us the opportunity to consult with the GOC on cases where it might be useful to delay the request.

BROWNFIELD